

EDMUND G. BROWN JR.
Attorney General of the State of California
PAUL T. HAMMERNESS
Supervising Deputy Attorney General
HARRY T. (CHIP) GOWER, III (SBN 170784)
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5500
Fax: (415) 703-5480
Email: Harry.Gower@doj.ca.gov

Attorneys for Defendant Mark Headrick

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALOYSIUS L. RHODES,

Plaintiff,

v.

MARK HEADRICK,

Defendant.

Case No.: CV 07-03754-CW

**RE- NOTICE OF MOTION AND
MOTION TO DISMISS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: September 18, 2008

Time: 2:00 p.m.

Place: Courtroom 2, 4th Floor
1301 Clay Street,
Oakland, CA

Judge: Claudia Wilken

Date Action Filed: July 20, 2007

Trial Date: Not Set

NOTICE OF MOTION AND MOTION

TO PLAINTIFF AND HIS COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on September 18, 2008, at 2:00 p.m., or as soon thereafter as the matter may be heard, in Courtroom 2 of this Court, located at 1301 Clay Street, Oakland, California, defendant Mark Headrick will, and hereby does, move this Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for an Order dismissing this case with prejudice.

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1 This Motion is made on the grounds that the Complaint fails to state a federal claim upon
2 which relief can be granted. This Motion is based upon this Notice of Motion and Motion, the
3 Memorandum of Points and Authorities filed herewith, and the pleadings, orders, memoranda,
4 exhibits and other documents already on file in this action.

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6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. FACTS**

8 Plaintiff alleges a cause of action under 42 U.S.C. section 1983 for wrongful arrest.
9 (Complaint, ¶¶ 1, 10.) Plaintiff alleges that the defendant, CHP Officer Mark Headrick, arrested
10 him on September 6, 2003. (Complaint, ¶ 10.)

11 **II. STATEMENT OF ISSUES TO BE DECIDED**

12 1. The Complaint fails to allege facts sufficient to state a federal claim upon which
13 relief can be granted, because the complaint is barred by the statute of limitations.

14 **III. ARGUMENT**

15 **The Complaint Is Barred by the Statute of Limitations**

16 In 42 U.S.C. section 1983 actions, the federal courts borrow the state statute of
17 limitations that applies to personal injury actions. *Wilson v. Garcia*, 471 U.S. 261, 279-280
18 (1985); *Silva v. Crain*, 169 F.3d 608, 610 (9th Cir. 1999). At the time of Plaintiff's arrest,
19 September 6, 2003, the California general personal injury statute of limitations was two years.
20 Cal. Civ. Proc. Code § 335.1 (West 2006.) Plaintiff, then, had two years in which to file this
21 lawsuit-- that is, until September 5, 2005. Plaintiff, however, did not file this lawsuit until July
22 20, 2007, and it is barred by the statute of limitations.

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1 **IV. CONCLUSION**

2 Plaintiff's federal civil rights claim is barred by the statute of limitations. Accordingly,
3 CHP Officer Mark Headrick respectfully requests that the Court grant this motion and dismiss
4 the Complaint with prejudice.

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6 Dated: August 4, 2008

7 Respectfully submitted,

8 EDMUND G. BROWN JR.
9 Attorney General of the State of California
10 PAUL T. HAMMERNESS
Supervising Deputy Attorney General

11 /s/ **HARRY T. GOWER, III**
12 HARRY T. GOWER, III
13 Deputy Attorney General
Attorneys for Defendant Mark Headrick

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